

CONRAIL

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Nov 27 3 02 PM '96

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November 26, 1996

UPS

Colleen T. Sealander, Esquire
Attorney
General Counsel's Office
Federal Election Commission
Washington, D.C. 20463

RE: MUR 4545

Dear Ms. Sealander:

This letter is in response to yours dated November 4, 1996 advising Conrail that the Republican National Committee ("RNC") had filed a complaint (the "complaint") with the Federal Election Commission indicating that Conrail may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). By letter dated November 14, 1996 Conrail requested an extension of time, to and including November 27, 1996, to respond to the filed complaint. That extension was granted and this letter, along with the attached affidavit of Mr. Mark Owens and two exhibits constitute Conrail's timely response to the RNC complaint.

Insofar as the complaint apparently attempts to implicate Conrail, it alleges that the Clinton for President Primary Committee ("Clinton-Gore '96") caused expenditures to be made by sources prohibited from contributing . . . for costs of campaign events and travel during a train trip ("the train trip"). Although the substance or extent of any alleged violations by Conrail is far from clear upon a reading of the complaint, the allegation appears to vaguely imply that Conrail may have made an unlawful corporate contribution by absorbing a portion of the costs it incurred as a participant in the Presidential train trip. While Conrail did allow an Amtrak special train for President Clinton ("Presidential special") to operate over its tracks in August 1996, the administrative and operational arrangements for that train were fulfilled pursuant to the normal and ordinary business procedures Conrail has

for use of its track by Amtrak. Moreover, as Mr. Owens explains more fully in his Affidavit attached hereto, all Conrail costs incurred in conjunction with the Presidential special have been billed to Amtrak pursuant to customary, normal procedures and contractual obligations currently in effect between Amtrak and Conrail.

Conrail neither has nor had a contractual relationship with Clinton-Gore '96. Its involvement with the Amtrak Presidential special was solely pursuant to, (1) a pre-existing contract with Amtrak and (2) the requirements of Federal statute. (See exhibits 1 and 2 hereto). Conrail is obligated, pursuant to its "Off-Corridor Operating Agreement" with Amtrak, to operate special train service when requested by Amtrak. A copy of section 3.2 of the Operating Agreement is attached hereto as exhibit 1, and incorporated as part of this response. That section provides in pertinent part that:

"Amtrak shall have the right from time to time to request, and subject to and in accordance with the terms and conditions of this Agreement including Section 3.3, Conrail hereby agrees to provide new, modified, additional or reduced services."

Section 3.3 of the Agreements further provides in pertinent part that:

"Conrail further agrees to provide and furnish all labor, materials, equipment and facilities necessary to the services to be provided under Section 3.1 and 3.2 . . ."

The terms of the Operating Agreement are consistent with, and authorized by, the provisions of 49 U.S.C. §24308 which provides that Amtrak may enter into a contract with a rail carrier for the use of that carrier's facilities and services.

In that Conrail's only involvement with Amtrak's special Presidential train was one required by a pre-existing contract and Federal statute, there was not and could not have been any unlawful corporate contribution by Conrail since all Conrail incurred costs have been billed pursuant to the contractual relationship with Amtrak.


Mr. Owens, by his Affidavit, explains in detail the procedure Conrail has in place to insure that all costs associated with special trains are captured and subsequently billed to Amtrak. Mr. Owens further explains that Conrail did not

provide any rolling stock equipment for this special train and that the charges for mileage and crews were computed as they would have been for any special train which moved under the terms of the existing Off-Corridor Operating Agreement between with Conrail and Amtrak.

In conclusion, Conrail's involvement in the Amtrak special Presidential train was solely pursuant to statutory requirements and contractual obligations with Amtrak. Mr. Owens in his Affidavit, has concluded that Conrail made every effort to recover and bill all of its costs and other allowable charges as required by the Off-Corridor Agreement with Amtrak. Under these circumstances it is clear that Conrail had no relationship with the Clinton-Gore '96 organization, only participated in the movement of Amtrak's Presidential special pursuant to the dictates of federal statute and contractual obligations, and hence, did not violate the Act in any respect, given that all billable costs have been submitted to Amtrak for payment.

Since, under the facts as stated in Mr. Owens' Affidavit, Conrail did not either directly, or indirectly, contribute to the Clinton-Gore '96 campaign, an allegation that Conrail may be in violation of the Act cannot be sustained and Conrail should be dismissed as a respondent in this proceeding.

Respectfully submitted,


William H. Johnson
Associate General Counsel

WHJ/dmcd

cc: Erik Morrison
General Counsel Office
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA :
:
COUNTY OF PHILADELPHIA :

My name is Mark M. Owens and I am employed by Consolidated Rail Corporation ("Conrail") as Director of Freight/Passenger Coordination. My office is located at 2001 Market Street, Room 14C, Philadelphia, Pennsylvania 19103. I have been employed by Conrail and it's predecessor railroads since May of 1974. In my 22 years of railroad employment I have worked in various positions including, Trainman, Block Operator, Train Dispatcher, Trainmaster, Assistant Terminal Superintendent, Terminal Superintendent, Assistant Division Superintendent, Division Superintendent and currently as Director of Freight/Passenger Coordination. I was appointed to my current position in February of 1994.

As Director of Freight/Passenger Coordination I am responsible for the day to day operations of passenger trains on Conrail lines. Those rail operations consist of intercity passenger trains, operated by Amtrak under contract with Conrail, in addition to commuter trains sponsored by various state and public authorities which operate over Conrail trackage throughout the Conrail system. I also monitor the daily operation of Conrail freight trains over Amtrak's Northeast Corridor.

I have been informed that the Federal Election Committee has received a complaint, filed by the Republican National Committee, which alleges that Conrail may have violated the Federal Election Campaign Act of 1971 by absorbing a portion of the costs it incurred in conjunction with the operation of an Amtrak special

train over Conrail tracks in August 1996 (the Presidential special"). This train operated over a portion of Conrail's territories from Columbus, Ohio to Detroit, Michigan and from Battle Creek, Michigan to Kalamazoo, Michigan, and from Porter, Indiana to Chicago, Illinois. As I understand it, the Republican National Committee's complaint asserts that Conrail may have made a prohibited corporate contribution to the Clinton-Gore President Primary Committee ("Clinton-Gore '96") by absorbing certain costs associated with the train's operation. As I will explain more fully below these allegations are totally unfounded.

The Presidential train, which is the subject of the filed complaint, was an Amtrak special train. Between August 26 and August 28, 1996 that train operated over Conrail's tracks under a contractual agreement which requires Conrail to provide track access for any Amtrak special train movements upon Amtrak's request. Conrail handled the special Presidential train in the same manner as it is contractually obligated to accommodate all Amtrak specials.

As Conrail's direct liaison officer with Amtrak I was personally involved with the planning, implementation and billing arrangements associated with Amtrak's Presidential special. Conrail's involvement with the Amtrak special Presidential train began with a telephone call from Amtrak's Vice President of Operations, Robert Vanderclute on June 25, 1996. Mr. Vanderclute advised Conrail that Amtrak was looking into the possibility of operating a special train for the President of the United States. It was requested that I contact Danny Boehr of Amtrak and attend a meeting with representatives from Amtrak, CSXT, and the

GTW railroads. A subsequent scouting trip with the aforementioned railroads took place on July 9th and 10th of this year over Conrail territory between Cincinnati and Toledo, and between Battle Creek, Michigan and Kalamazoo, Michigan. Costs associated with this preliminary scouting trip were included in Conrail's bill to Amtrak for all expenditures resulting from the Presidential special.

I attended a subsequent planning meeting with Amtrak in Washington on July 16th where it was decided that the special train would, in addition to operating over portions of the CSX, GTW and Amtrak railroads, would operate on Conrail's tracks from Columbus, Ohio to Detroit, Michigan, from Battle Creek, Michigan to Kalamazoo, Michigan, and from Porter, Indiana to Chicago, Illinois. The Amtrak special train itself consisted of three trains made up of Amtrak and CSX equipment. Conrail did not provide any rolling stock equipment.

Since these trains were special trains not operating over regularly scheduled Amtrak routes, Conrail provided all train and engine crews when the trains operated over Conrail owned lines of track, with the exception of that portion between Battle-Creek and Chicago where Amtrak crews are qualified and operated the train. This is the normal and customary procedure required by various labor operating agreements.

As with all Amtrak specials that operate over Conrail's tracks, every identifiable cost associated with the Amtrak Presidential special train was captured and billed to Amtrak as required under the Conrail agreement with Amtrak referred to above. Conrail's sole involvement in the special Presidential train trip was

through its contractual relationships with Amtrak. There was no contractual agreement between Clinton-Gore '96 and Conrail.

Amtrak was charged a standard mileage rate established by its current operating agreement with Conrail and any additional costs directly incurred by Conrail and associated with the special train.

Conrail's process for capturing its costs associated with the Presidential train was the same as for any other Amtrak special and was handled in the regular course of Conrail's billing operations. Essentially that process is as follows. At the inception of any Amtrak special, Conrail establishes an account number ("AN") with Amtrak and converts the "AN" number to an identifiable Conrail work order number. This work order number is the identifier number Conrail workforces then assign to all expenditures of time and equipment associated with the special train movement. This is Conrail's standard procedure for capturing the costs associated with any Amtrak special train operating on Conrail's track pursuant to the above referenced operating agreement and it was the procedure utilized for accumulating the costs of the Amtrak Presidential train. Conrail's services associated with the Amtrak Presidential special train have amounted to \$87,596.40, the total of which has been billed to Amtrak for payment.

I have no knowledge of Amtrak's billing arrangements with the Democratic Committee, the Clinton-Gore '96 Campaign Committee or any other non-rail operating organization that may have requested or otherwise been involved with the provision for the special Presidential train.

In summary, all arrangements for any special train services with Conrail are accomplished through existing operating agreements with Amtrak. The Amtrak Presidential special was handled by Conrail consistent with its agreements with Amtrak and Amtrak has been billed by Conrail to recover all of its costs and other allowable charges according to the terms of that agreement.



Mark M. Owens

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF PHILADELPHIA

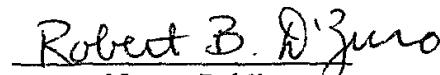
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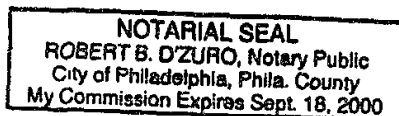
VERIFICATION

Mark Owens, being duly sworn, deposes and says that he has made and read the foregoing Affidavit, that the statements contained therein are made upon his personal knowledge and that the same are true and correct to the best of his knowledge, information and belief.


Mark M. Owens

Subscribed and sworn to
before me this 26th day
of November, 1996.


Notary Public



**AMENDED AND RESTATED
OFF-CORRIDOR OPERATING AGREEMENT**

THIS AGREEMENT is between National Railroad Passenger Corporation, a corporation organized under the Rail Passenger Service Act (hereinafter referred to as the "Act") and the laws of the District of Columbia (hereinafter referred to as "Amtrak"), and Consolidated Rail Corporation, a corporation organized under the laws of Pennsylvania (hereinafter referred to as "Conrail").

WHEREAS, Amtrak was organized pursuant to the Act for the purpose of providing modern efficient intercity rail passenger service within a national rail passenger system and to be managed and operated as a for profit corporation;

WHEREAS, Conrail was organized pursuant to the Regional Rail Reorganization Act of 1973 as a for-profit corporation;

WHEREAS, as of April 1, 1976, Conrail and Amtrak entered into the Off-Corridor Operating Agreement (hereinafter referred to as the "Basic Agreement") with respect to the provision of services and facilities for intercity rail passenger operations; and

WHEREAS, Section 7.2 of the Basic Agreement was superseded effective October 1, 1978, by the Liability Apportionment Agreement, and Article 5A was deleted and Section 5.1(b) was amended by the Settlement Agreement, effective as of December 31, 1982; and

WHEREAS, the Basic Agreement provided for redetermination of compensation payable to Conrail, by agreement or submission to the Interstate Commerce Commission pursuant to Section 402(a) of the Rail Passenger Service Act, upon request of either party; and

WHEREAS, Conrail and Amtrak have negotiated this Agreement (the "Agreement"), which amends certain provisions, adds additional provisions, and, upon the effective date of this Agreement, April 14, 1996, entirely supersedes the Basic Agreement and, except as specifically provided in this Agreement, other agreements with respect to Amtrak operations on the Rail Lines.

NOW THEREFORE, the parties, intending to be legally bound, agree as follows:

ARTICLE ONE

DEFINITIONS

Section 1.1. Definitions.

(a) "Rail Lines" means all of Conrail's rights of way and real properties appurtenant thereto which constitute its trackage in the United States, whether owned or leased or otherwise held by Conrail, and all of its rights to use such properties of others, together with the roadway structures thereon or appurtenant thereto used in connection with the actual or potential operation of Intercity Rail Passenger Trains, excluding, however, the Rail Lines described in Section 8.1. of this Agreement.

(b) "Intercity Rail Passenger Service" means all rail passenger service over the Rail Lines (including the movement of special trains), other than commuter and other short haul service in metropolitan and suburban areas, usually characterized by reduced fare multiple-ride commutation tickets, and by morning and evening peak period operations.

(c) "Intercity Rail Passenger Trains" means all trains operated in Intercity Rail Passenger Service.

ARTICLE TWO

EXCLUSIVE PASSENGER RIGHTS

Section 2.1. Exclusive Passenger Rights.

Conrail agrees that it shall not, without the prior written consent of Amtrak, operate or provide (or seek the common carrier authority to operate) any regularly scheduled Intercity Rail Passenger Service on its Rail Lines except pursuant to and in accordance with this Agreement, and shall not permit third parties to operate such service on Rail Lines used by Amtrak.

ARTICLE THREE

THE SERVICES

Section 3.1. Right to Services.

Subject to and in accordance with the terms and conditions of this Agreement, including Section 3.3, Conrail agrees to provide Amtrak, over the Rail Lines, with the services requested by Amtrak for or in connection with the operation of Amtrak's Intercity Rail Passenger Service, including the carrying of mail and express on Intercity Rail Passenger Trains to the extent authorized by the Act. The routes, schedules, and consists of Amtrak Intercity Rail Passenger trains operated on the Rail Lines shall be compatible with the physical capabilities of Conrail and its Rail Lines.

Section 3.2. Modification of the Services.

(a) Amtrak shall have the right from time to time to request, and subject to and in accordance with the terms and conditions of this Agreement including Section 3.3, Conrail hereby agrees to provide new, modified, additional, or reduced services. Unless otherwise agreed, such requests shall be made (except with respect to emergency services as set

forth in Subsection (b) below) by filing a written request with Conrail 30 days in advance of the date upon which such request is to become effective to permit adequate joint planning and joint preparation for the modified or additional services provided for in such request. The services sought in any such request shall be subject to the physical and financial capabilities of Conrail and shall give due regard to Conrail's speed, weight and similar operating restrictions and rules and safety standards and to the avoidance of unreasonable interference with the adequacy, safety and efficiency of Conrail's other railroad operations. In applying the foregoing, recognition shall be given to the importance of fast, reliable and convenient schedules and passenger comfort and convenience to the success of Amtrak's Intercity Rail Passenger Service.

(b) Amtrak shall have the right from time to time to request, and subject to and in accordance with the terms and conditions of this Agreement, Conrail hereby agrees to provide, emergency services over the Rail Lines or to arrange to the extent possible over the rail lines of another railroad, as necessary, required as a result of the Rail Lines (or rail lines of another railroad used in the operation of passenger trains by or on behalf of Amtrak) becoming impassable, unsafe or impractical for use in rail passenger service. Amtrak may request the performance or discontinuance of such emergency services orally; however, any request shall be made as far in advance as possible of the time the emergency services are required, and shall be confirmed in writing within twenty-four (24) hours after communication to Conrail. The emergency services requested shall be compatible with the physical capabilities of Conrail.

When said emergency services are provided on rail lines of another railroad, Amtrak shall indemnify and save Conrail harmless, irrespective of any negligence or fault of Conrail, its employees, agents, or servants or howsoever the same shall occur or be caused, from any and all liability for injury or death of any person or persons, other than

employees of Conrail, and from any and all liability for loss, damage, or destruction to any properties, which arise from the provision of said emergency services. Conrail agrees to use reasonable efforts to provide emergency services requested under this Agreement in an expeditious and efficient manner.

In the event an Amtrak train ordinarily operated over rail lines of other railroads is detoured over Rail Lines of Conrail, Conrail will (except as may otherwise be provided in other provisions of this Agreement) be reimbursed by Amtrak for all of Conrail's additional costs resulting from the detour, including crews and/or pilots. Except as provided in the foregoing sentence and except for incremental track maintenance and liability payments as specified in Items 6 and 15 of Appendix IV, Amtrak shall not be obligated to pay Conrail any additional amount for use of its Rail Lines in connection with such detours. Conrail shall not bill other railroads for any costs or charges in connection with such detours. Employees of other railroads who operate trains on behalf of Amtrak over the Rail Lines shall, while on such Rail Lines, be deemed employees of Amtrak for purposes of Section 7.2 of this Agreement.

Section 3.3. Standards of Performance.

(a) Conrail further agrees to provide and furnish all labor, materials, equipment and facilities necessary to the services to be provided under Section 3.1 and 3.2 (except as the same are provided by Amtrak), but shall not, except as otherwise provided in this Agreement or upon agreement with Amtrak, be required to purchase, construct, rebuild or replace Rail Lines, locomotives, cars, rolling stock or ancillary facilities (as defined in Section 3.8), or to provide commissary or maintenance of equipment services or any other services requiring the use by Conrail of ancillary facilities owned or leased by Amtrak.

Legislative History

For legislative history and purpose of Pub.L. 103-272, see 1994 U.S. Code Cong. and Adm. News, p. 818.

§ 24308. Use of facilities and providing services to Amtrak

(a) General authority.—(1) Amtrak may make an agreement with a rail carrier or regional transportation authority to use facilities of, and have services provided by, the carrier or authority under terms on which the parties agree. The terms shall include a penalty for untimely performance.

(2)(A) If the parties cannot agree and if the Interstate Commerce Commission finds it necessary to carry out this part, the Commission shall—

- (i) order that the facilities be made available and the services provided to Amtrak; and
- (ii) prescribe reasonable terms and compensation for using the facilities and providing the services.

(B) When prescribing reasonable compensation under subparagraph (A) of this paragraph, the Commission shall consider quality of service as a major factor when determining whether, and the extent to which, the amount of compensation shall be greater than the incremental costs of using the facilities and providing the services.

(C) The Commission shall decide the dispute not later than 90 days after Amtrak submits the dispute to the Commission.

(3) Amtrak's right to use the facilities or have the services provided is conditioned on payment of the compensation. If the compensation is not paid promptly, the rail carrier or authority entitled to it may bring an action against Amtrak to recover the amount owed.

(4) Amtrak shall seek immediate and appropriate legal remedies to enforce its contract rights when track maintenance on a route over which Amtrak operates falls below the contractual standard.

(b) Operating during emergencies.—To facilitate operation by Amtrak during an emergency, the Commission, on application by Amtrak, shall require a rail carrier to provide facilities immediately during the emergency. The Commission then shall promptly prescribe reasonable terms, including indemnification of the carrier by Amtrak against personal injury risk to which the carrier may be exposed. The rail carrier shall provide the facilities for the duration of the emergency.

(c) Preference over freight transportation.—Except in an emergency, intercity and commuter rail passenger transportation provided by or for Amtrak has preference over freight transportation using a rail line, junction, or crossing unless the Secretary of Trans-

portation orders otherwise under this subsection. A rail carrier affected by this subsection may apply to the Secretary for relief. If the Secretary, after an opportunity for a hearing under section 553 of title 5, decides that preference for intercity and commuter rail passenger transportation materially will lessen the quality of freight transportation provided to shippers, the Secretary shall establish the rights of the carrier and Amtrak on reasonable terms.

(d) Accelerated speeds.—If a rail carrier refuses to allow accelerated speeds on trains operated by or for Amtrak, Amtrak may apply to the Secretary for an order requiring the carrier to allow the accelerated speeds. The Secretary shall decide whether accelerated speeds are unsafe or impracticable and which improvements would be required to make accelerated speeds safe and practicable. After an opportunity for a hearing, the Secretary shall establish the maximum allowable speeds of Amtrak trains on terms the Secretary decides are reasonable.

(e) Additional trains.—(1) When a rail carrier does not agree to provide, or allow Amtrak to provide, for the operation of additional trains over a rail line of the carrier, Amtrak may apply to the Secretary for an order requiring the carrier to provide or allow for the operation of the requested trains. After a hearing on the record, the Secretary may order the carrier, within 60 days, to provide or allow for the operation of the requested trains on a schedule based on legally permissible operating times. However, if the Secretary decides not to hold a hearing, the Secretary, not later than 30 days after receiving the application, shall publish in the Federal Register the reasons for the decision not to hold the hearing.

(2) The Secretary shall consider—

(A) when conducting a hearing, whether an order would impair unreasonably freight transportation of the rail carrier, with the carrier having the burden of demonstrating that the additional trains will impair the freight transportation; and

(B) when establishing scheduled running times, the statutory goal of Amtrak to implement schedules that attain a system-wide average speed of at least 60 miles an hour that can be adhered to with a high degree of reliability and passenger comfort.

(3) Unless the parties have an agreement that establishes the compensation Amtrak will pay the carrier for additional trains provided under an order under this subsection, the Commission shall decide the dispute under subsection (a) of this section.

(Added Pub.L. 103-272, § 1(e), July 5, 1994, 108 Stat. 911.)

HISTORICAL AND STATUTORY NOTES

Revised Section

Source (U.S. Code)

Source (Statutes at Large)

2408(a)(1)-(3) 45:562(a)(1)

Oct. 30, 1970, Pub.L. 91-518, § 402(a)(1), 84 Stat. 1335; June 22, 1972, Pub.L.